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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

30 JUL 1974

LOK SABHA

The following report of the Joint Committee on the Bill to provide for the speedy trial of certain offences in certain areas and for matters connected therewith was presented to Lok Sabha on the 30th April, 1974:—

COMPOSITION OF THE COMMITTEE

*Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri M. C. Daga
3. Shri Madhu Dandavate
4. Shri Tulsidas Dasappa
5. Shri Biren Dutta
6. Shri C. D. Gautam
7. Shri Dinesh Chander Goswami
8. Shrimati Subhadra Joshi
9. Dr. Kailas
10. Shri Purushottam Kokodkar
11. Shri Sat Pal Kapur
12. Shrimati T. Lakshmikanthamma
†13. Shri Vikram Mahajan
14. Shri Mukhitar Singh Malik
15. Shri Prasannbhai Mehta
16. Shri G. S. Mishra
17. Shri F. H. Mohsin
18. Shri Priya Ranjan Das Munsi

*Appointed Chairman w.e.f. 27-2-1973 *vice* Shri R. D. Bhandare ceased to be member of Lok Sabha.

†Appointed w.e.f. 5-4-73 *vice* Shri R. D. Bhandare ceased to be member of Lok Sabha.

19. Shri Balakrishna Venkanna Naik
20. Shri Sarjoo Pandey
%21. Shri P. C. Pant
22. Shri H. M. Patel
23. Shri M. Satyanarayan Rao
24. Shri Ebrahim Sulaiman Sait
25. Shri Nawal Kishore Sharma
26. Shri B. R. Shukla
27. Shri N. Tombi Singh
28. Shri C. M. Stephen
29. Shri K. Veeriah
30. Shri R. P. Yadav

Rajya Sabha

31. Shri Todak Basar
32. Shri S. B. Bobdey
33. Shri Nabin Chandra Buragohain
£34. Shri Mahendra Mohan Choudhury
35. Shrimati Sita Devi
**36. Shrimati Jahanara Jaipal Singh
37. Shri Ibrahimbhai Kasambhai Kalania
38. Shri M. S. Abdul Khader
@39. Dr. Bhai Mahavir
40. Shri Veerendra Patil
41. Shri Hamid Ali Schamnad
42. Shri Yogendra Sharma
43. Shri Ranbir Singh
44. Shri Sitaram Singh
45. Shri Sikandar Ali Wajd

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri S. Balakrishnan—*Joint Secretary.*
2. Shri B. R. Patel—*Joint Secretary.*
3. Shrimati P. Ramachandran—*Director.*
4. Shri S. D. Srivastava—*Under Secretary.*

SECRETARIAT

1. Shri P. K. Patnaik—*Joint Secretary.*
2. Shri H. G. Paranjpe—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to provide for the speedy trial of certain offences in certain areas and for matters connected therewith, was referred, having been authorised to submit the report on their behalf, present their report with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 31st May, 1972. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Ram Niwas Mirdha, Minister of State in the Ministry of Home Affairs on the 16th August, 1972 and was adopted.

3. Rajya Sabha concurred in the said motion on the 21st August, 1972.

4. The message from Rajya Sabha was reported to Lok Sabha on the 23rd August, 1972.

5. The Committee held 20 sittings in all.

6. The first sitting of the Committee was held on the 28th August, 1972 to draw up their programme of work. The Committee decided to invite memoranda from various associations, organisations, individuals, etc., interested in the subject matter of the Bill and also decided to issue a Press Communique in this behalf fixing 25th September, 1972 as the last date for receipt of memoranda. The Chairman was authorised to decide, after examining the memoranda received from various associations, organisations, etc., as to which of them should be called upon to give oral evidence before the Committee.

7. 4 memoranda on the Bill were received by the Committee from various associations, organisations, etc.

8. The Committee heard the evidence given by various associations, organisations, individuals, etc. at their sittings held on the 11th and 12th October, 1972.

9. The report of the Committee was to be presented by the 13th November, 1972. The Committee were granted five extensions of time the first extension on 13th November, 1972 upto the 22nd December, 1972; the second extension on the 15th December, 1972 upto the 30th March, 1973; the third extension on the 26th March, 1973 up to the 27th July, 1973; the fourth extension on the 25th July, 1973 upto the 17th December, 1973; and the fifth extension on the 10th December, 1973 upto the 7th May, 1974.

10. The Committee considered the Bill clause-by-clause at their sittings held from the 8th to 11th April, 1974.

*Published in the Gazette of India, Extraordinary, Part II, Section 2 dated the 31st May, 1972.

11. At their sitting held on the 11th April, 1974, the Committee decided that two copies each of the (i) evidence tendered before them; and (ii) memoranda received by them from various associations, organisations, etc. might be placed in Parliament Libarary, atfer the report of the Committee was presented, for reference by the members of Parliament.

12. The Committee considered and adopted the report on the 25th April, 1974.

13. The observations of the Committee with regard to the changes proposed in the Bill are detailed in the succeeding paragraphs.

14. *Clause* 2.—The Committee feel that it would be convenient to define the expression "period of disturbance".

A new definition has been added accordingly. The Committee also feel that it should be made clear that Special Courts will have jurisdiction only in respect of offences specified in the Schedule to the Bill which form part of arise out of or are connected with disturbances of the nature referred to in clause 3. The definition of "scheduled offence" has been amended for this purpose.

15. *Clause* 3.—

(i) *Sub-clause* (1).—The amendments made are of drafting nature.

(ii) *Sub-clause* (2).—The Committee feel that the period to be specified in the notification should not be fixed arbitrarily but should be related to the period of disturbance. The commencement of the period specified in the notification should not be earlier than the date of commencement of the disturbance and the period should be terminated when the disturbance has ceased. The Committee also feel that the period should not be made to commence from a date earlier than three months before the date of publication of the notification.

Sub-clause (2) has been amended accordingly. Other amendments made are of drafting nature.

16. *Clause* 4.—

(i) *Sub-clause* (2).—The Committtee feel that this sub-clause should be changed to bring it in line with the provisions of the new Code of Criminal Procedure dealing with appointment of Judicial Magistrates. The sub-clause has been amended accordingly.

(ii) *Sub-clauses* (3) *and* (4).—The Committee are of the view that it would not be appropriate to appoint a sitting Judge of a High Court as a Special Judge. The Committee are also of the view that it would not be appropriate to appoint retired persons. For these purposes, sub-clause (3) has been amended and a new sub-clause (4) has been substituted for existing sub-clause (4) which is being omitted as superfluous.

17. *Clause* 5.—The amendment is of a drafting nature.

18. *Clause* 6.—

(i) *Sub-clauses* (1) *to* (3).—The Committee feel that scheduled offences should be cognizable. The Committee also feel that consequent

upon the enactment of the new Code of Criminal Procedure, 1973, a few changes are necessary to provide for certain matters like the supply of copies of statements, etc. and the procedure to be followed in a case where the offence is exclusively triable by a Court of Sessions and also in other cases. In the case of offences triable by a Court of Sessions, the revised procedure of commitment under the new Code has to be followed. In other cases, a certificate from the Public Prosecutor has been provided for as a safeguard to ensure that cases unconnected with disturbances are not taken cognizance of. The Committee also feel that where in the course of summary trial it appears to the Special Court that the case is one which is of a character which should not be tried summarily, the Court may recall any witness who may have been examined and proceed to hear the case in accordance with the procedure prescribed in the Code of Criminal Procedure, for trial of such cases.

Sub-clauses (1) to (3) have been amended to provide for these matters.

(ii) Sub-clause (6) [original sub-clause (4)].—The amendments made are of a consequential nature.

19. *Clauses* 7 *to* 9.—The amendments made are of a consequential and drafting nature.

20. *Clause* 1 *and Enacting Formula.*—The amendments made are of a formal nature.

21. The Joint Committee recommend that the Bill, as amended. be passed.

NEW DELHI;
April 30, 1974.
Vaisakha 10, 1896 (*Saka*).

L. D. KOTOKI,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

We could have heartily supported the Disturbed Areas (Special Courts) Bill if it had conformed to the recommendation of the National Integration Council that "special courts with summary powers to deal with the offences connected with communal disturbances should be constituted." But the Bill seeks to cover offences connected with not only communal disturbances but also linguistic and regional disturbances. Thus the Bill distorts and vitiates the recommendation of the National Integration Council.

2. The operative part of the Bill is not consistent with the statement of objects and reasons of the Bill. There are three reasons for enacting this Bill as given in the statement of objects and reasons. None of these reasons justify that offences arising out of linguistic and regional disputes should be made triable by Special Courts, as has been provided in this Bill.

3. It is a dangerous underestimation of communal disturbances to treat them on equal footing with linguistic or regional disturbances. Whereas the former deserves speedy suppression by effective means, the latter deserve political solution as has been done in the case of movements for linguistic states.

4. State Governments concerned will come into dangerous conflict with one another jeopardising the very object of national integration if they are empowered to set up Special Court to deal with offences arising out of linguistic and regional disputes. It should be the responsibility of Central authority to settle linguistic and regional disputes on a principled basis in time obviating any large scale, disturbance on that count.

5. Empowering State Governments to set up Special Courts for trying offences arising out of linguistic or regional disputes will, in practice, result into suppression and suffering of linguistic minorities.

6. A State Government should not have unlimited power to extend the period of notification declaring an area as disturbed area for the purpose of this Bill. It should not have the power to extend the notification beyond another period not exceeding three months.

7. The legislature of the State concerned should also be brought in to give its judgment in an appropriate manner consistent with the objective of speedy trial in notifying an area to be a disturbed one for the purpose of this Bill. But the Bill does not provide for it.

NEW DELHI;
April 25, 1974.

SARJOO PANDEY
YOGENDRA SHARMA

II

I am giving this note of dissent to this Bill on the following grounds and hold that this Bill should not be proceeded with.

(i) Communal forces in the country have receded and the forces of secularism have grown. So there is no need for such an Act to curb religious type of communal offences for which National Integration Committee suggested for such an Act.

(ii) The growth of secular forces has given the linguistic minorities in every State encouragement to assert their rights in a democratic manner. These linguistic minorities will be suppressed by this Act and the reactionary forces of majority community through their influences in the State Governments will utilise this Act to continue the suppression of the just aspirations of the linguistic minorities. Specially the tribal people with their spoken languages liivng in contiguous areas of all States of India are agitating for their just rights. This Act will put a curb on their just movements.

(iii) This Bill will not hasten speedy trial of offenders. On the contrary it will cause further delay in the trial due to procedural encumbrances.

NEW DELHI;
April 25, 1974.

BRIEN DUTTA

III

After considerable modifications in the Code of Criminal Procedure there is no need to adopt this Bill at all.

Merely by giving powers to the State Governments to declare a particular area a 'disturbed area', the problem of ensuring peace and tranquility cannot be solved.

In the present explosive situation, strengthening of the executive arm of the Government is not going to establish peace in the disturbed areas. Very often it is the social mal-adjustments, economic discontent and failure to resolve inter-State disputes on the basis of well-defined norms and principles and not on the basis of political expediency that give rise to disturbances. The oppression of Scheduled Castes and Scheduled Tribes is also causing serious disturbances and a new upsurge among these oppressed sections to offer resistance to this oppression is discernible.

Under these circumstances without going to the root of the mal-adjustments, mere strengthening of the arm of the executive in declaring disturbed areas and of the judiciary in quick disposal of the cases, peace cannot return to the disturbed areas. If peace is established, it will only be an uneasy peace.

I am, therefore, totally opposed to the very basis of this Bill which seeks to tackle the problem of disturbed areas on an *ad hoc* basis in a superficial manner.

NEW DELHI;
April 29, 1974.

MADHU DANDAVATE

Bill No. 59-B of 1972

THE DISTURBED AREAS (SPECIAL COURTS) BILL, 1972

[AS REPORTED BY THE JOINT COMMITTEE]

[*Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

BILL

to provide for the speedy trial of certain offences in certain areas and for matters connected therewith.

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Disturbed Areas (Special Courts) Act, 1974.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States or for different parts thereof.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.

(*b*) "disturbed area" means an area declared as a disturbed area under section 3;

(c) period of disturbance, in relation to a disturbed area, means the period during which it is to be a disturbed area for the purposes of section 3;

(d) "scheduled offence" means an offence specified in the Schedule being an offence forming part or arising out of, or connected with, any such disturbance as is referred to in section 3;

(e) "Special Court" means a Special Court constituted under section 4;

(f) words and expressions used but not defined in this Act, and defined in the Code shall have the meanings respectively assigned to them in the Code.

Declaration of an area as disturbed area.

3. (1) Where a State Government is satisfied that—

(i) there was, or

(ii) there is,

in any area within a State extensive disturbance of the public peace and tranquillity, by reason of differences or disputes between members of different religious, racial, language or regional groups or castes or communities, it may, by notification in the Official Gazette, declare * such area to be * * * a disturbed area * * *

(2) A notification issued under sub-section (1) in respect of any area shall specify the period during which the area shall, for the purposes of this section, be a disturbed area and where the State Government is satisfied that there was such disturbance of the public peace as is referred to in sub-section (1) in that area from any date prior to the issue of such notification, the period specified in the notification may commence from that date:

Provided that—

(a) no period commencing from a date earlier than three months before the date of publication of the notification shall be specified therein; and

(b) so much of the period specified in such notification as is subsequent to the date of publication of the notification shall not, in the first instance, exceed three months but the State Government may amend such notification to extend such period from time to time by any period not exceeding three months at any one time if in the opinion of the State Government there continues to be in such area such disturbance of public peace and tranquility as is referred to in sub-section (1):

Provided further that where the State Government is satisfied that there is no longer such disturbance of the public peace as is referred to in sub-section (1) in such area, it shall amend the notification issued under that sub-section in respect of that area to limit the period specified therein (whether originally or by amendment under the preceding proviso) accordingly.

Constitution of Special Courts.

4. (1) The State Government may, for the purpose of providing speedy trial of scheduled offences committed in disturbed areas, by notification in the Official Gazette, constitute as many Special Courts as may be necessary in or in relation to such disturbed area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word "appoint" shall have the meaning given to it in the *Explanation* to section 9 of the Code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless—

(*a*) he * * *is qualified for appointment as a judge of a High Court, or

(*b*) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

(4) Notwithstanding anything contained in sub-section (3), a person shall not be eligible for being appointed as, and for being, a Judge of a Special Court in any State after he has attained the age at which Sessions Judges in that State have to retire from service.

Jurisdiction of Special Courts.

5. (1) Notwithstanding anything contained in the Code or any other law, a scheduled offence committed in any disturbed area at any time during the period during which it is a disturbed area shall be triable, whether during or after such period only by the Special Court constituted in or in relation to the disturbed area in which the offence has been committed.

(2) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the scheduled offence.

Procedure and powers of Special Courts.

6. (1) Every scheduled offence shall be cognizable.

(2) A Special Court may take cognizance of any scheduled offence,—

(*a*) where under the Code such offence is an offence triable exclusively by a Court of Session, upon its being committed to it under section 209 of the Code as if the Special Court were a Court of Session;

(*b*) in any other case, upon a police report of the facts together with a certificate from the public prosecutor to the effect that the offence is triable exclusively by the Special Court.

(3) Where a scheduled offence is an offence triable exclusively by a Court of Session under the Code, a Special Court shall have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, so far as may be in accordance with the procedure prescribed in the Code for trial before a Court of Session.

(4) Where a scheduled offence is an offence which is punishable with imprisonment for a term exceeding three years but which, ac-

cording to the provisions of the Code, is not an offence triable exclusively by a Court of Session, a Special Court may on taking cognizance of the offence perform the functions of a Magistrate under section 207 of the Code and thereafter try such offence so far as may be in accordance with the procedure prescribed in the Code for trial before a Court of Session as if the Special Court were a Court of Session and the case had been committed to it for trial under the provisions of the Code.

(5) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years or with fine or with both, a Special Court may, notwithstanding anything contained in sub-section (*1*) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it summarily, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(*6*) A Special Court, may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

Power to transfer cases to regular courts.

7. Where, after taking cognizance of any offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try the case, transfer the case for trial to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the case as if it had taken cognizance of the offence.

Appeal and revision.

8. The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court is a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Overriding effect of Act.

9. (*1*) The provisions of this Act shall have effect notwithstanding anything contained in the Code or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court; and for the purposes of the said provisions of the Code, the Special Court shall be deemed to be a Court of Session * * * and the person conducting a prosecution before a Special Court shall be deemed to be a public prosecutor.

(2) In particular and without prejudice to the generality of the provisions contained in sub-section (1), the provisions of sections 326 and 475 of the Code shall, so far as may be, apply to the proceedings before a Special Court, and for this purpose references in those provisions to a Magistrate shall be construed as references to the Special Court.

Saving.

10. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or any other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a court of ordinary criminal justice.

THE SCHEDULE

[*See* section 2(c)]

1. Offences under the following provisions of the Indian Penal Code:— **45 of 1860.**

Section 120B;

Sections 143 to 145, 147, 148, 151 to 155, 157, 158 and 160;

Sections 182, 183, 186 to 190;

Sections 193 to 195, 199, 201 to 203, 211 to 214, 216, 216A and 225;

Sections 295 to 298;

Sections 302, 303, 304, 307, 308, 323 to 335, 341 to 348, 352 to 358, 363 to 369 and 376;

Sections 379, 380, 382, 384 to 387, 392 to 399, 402, 411, 412, 426, 427, 431, 435, 436, 440, 447 to 462;

Sections 504 to 506 and 509.

2. Offences under the following provisions of the Arms Act, 1959:— **54 of 1959.**

Sections 25 to 30.

3. Offences under the following provisions of the Indian Explosives Act, 1884:— **4 of 1884.**

Sections 6(3) and 8(2).

S. L. SHAKDHER,
Secretary-General

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